

(c) Whenever the Commission is investigating a charge or allegation relating to a possible violation of one of the statutes which it administers and finds a violation of one or more of the other statutes which it administers, the Commission may seek to remedy such violation in accordance with the procedures of all relevant statutes.

[46 FR 4888, Jan. 19, 1981. Redesignated at 51 FR 29819, Aug. 20, 1986]

## PART 1621—PROCEDURES—THE EQUAL PAY ACT

Sec.

1621.1 Purpose.

1621.2 Definitions.

1621.3 Procedure for requesting an opinion letter.

1621.4 Effect of opinions and interpretations of the Commission.

AUTHORITY: Secs. 1-19, 52 Stat. 1060, as amended, secs. 10-16, 61 Stat. 84, Pub. L. 88-38, 77 Stat. 56 (29 U.S.C. 201 *et seq.*); sec. 1, Reorgan. Plan No. 1 of 1978, 43 FR 19807; E. O. 12144, 44 FR 37193.

SOURCE: 49 FR 31411, Aug. 7, 1984, unless otherwise noted.

### § 1621.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity Commission for issuing opinion letters under the Equal Pay Act.

### § 1621.2 Definitions.

For purposes of this part, the term *the Act* shall mean the Equal Pay Act the *Commission* shall mean the Equal Employment Opportunity Commission or any of its designated representatives.

### § 1621.3 Procedure for requesting an opinion letter.

(a) A request for an opinion letter should be submitted in writing to the Chairman, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, and shall contain:

(1) A concise statement of the issues for which an opinion is requested;

(2) A full statement of the relevant facts and law; and

(3) The names and addresses of the person(s) making the request and other interested persons.

(b) Issuance of an opinion letter by the Commission is discretionary.

(c) Informal advice: When the Commission, at its discretion, determines that it will not issue an opinion letter as defined in § 1621.4, the Commission may provide informal advice or guidance to the requestor. An informal letter of advice does not represent the formal position of the Commission and does not commit the Commission to the views expressed therein. Any letter other than those defined in § 1621.4 will be considered a letter of advice and may not be relied upon by any employer within the meaning of section 10 of the Portal to Portal Act of 1947, 29 U.S.C. 255.

[49 FR 31411, Aug. 7, 1984, as amended at 71 FR 26831, May 9, 2006]

### § 1621.4 Effect of opinions and interpretations of the Commission.

(a) Section 10 of the Portal to Portal Act of 1947, 29 U.S.C. 255, which applies to the Equal Pay Act of 1963, 29 U.S.C. 206(d), provides that:

In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment \* \* \* if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval or interpretation \* \* \* or any administrative practice or enforcement policy of [the Commission].

The Commission has determined that only the following documents may be relied upon by any employer as a "ruling, approval or interpretation" or as "evidence of any administrative practice or enforcement policy" of the Commission within the meaning of the statutory provisions quoted above.

(1) A written document, entitled "opinion letter," signed by the Legal Counsel on behalf of and as approved by the Commission;

(2) A written document issued in the conduct of litigation, entitled "opinion letter," signed by the General Counsel on behalf of and as approved by the Commission;

(3) A matter published and specifically designated as such in the FEDERAL REGISTER.

(b) An opinion letter issued pursuant to paragraph (a)(1) or (a)(2) of this section, when issued to a specific addressee, has no effect upon circumstances beyond the situation of the specific addressee.

## PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

### Subpart A—Interpretations

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1625.23 Waivers of rights and claims: Tender back of consideration.

AUTHORITY: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10-68; Secretary's Order No. 11-68; sec. 12, 29 U.S.C. 631, Pub. L. 99-592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

SOURCE: 46 FR 47726, Sept. 29, 1981, unless otherwise noted.

### Subpart A—Interpretations

#### § 1625.1 Definitions.

The Equal Employment Opportunity Commission is hereinafter referred to as the *Commission*. The terms *person*, *employer*, *employment agency*, *labor organization*, and *employee* shall have the meanings set forth in section 11 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et*

*seq.*, hereinafter referred to as the *Act*. References to *employers* in this part state principles that are applicable not only to employers but also to labor organizations and to employment agencies.

#### § 1625.2 Discrimination between individuals protected by the Act.

(a) It is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals 40 and over. Thus, if two people apply for the same position, and one is 42 and the other 52, the employer may not lawfully turn down either one on the basis of age, but must make such decision on the basis of some other factor.

(b) The extension of additional benefits, such as increased severance pay, to older employees within the protected group may be lawful if an employer has a reasonable basis to conclude that those benefits will counteract problems related to age discrimination. The extension of those additional benefits may not be used as a means to accomplish practices otherwise prohibited by the Act.

[46 FR 47726, Sept. 29, 1981, as amended at 53 FR 5972, Feb. 29, 1988]

#### § 1625.3 Employment agency.

(a) As long as an employment agency regularly procures employees for at least one covered employer, it qualifies under section 11(c) of the Act as an employment agency with respect to all of its activities whether or not such activities are for employers covered by the act.

(b) The prohibitions of section 4(b) of the Act apply not only to the referral activities of a covered employment agency but also to the agency's own employment practices, regardless of the number of employees the agency may have.

#### § 1625.4 Help wanted notices or advertisements.

(a) When help wanted notices or advertisements contain terms and phrases such as *age 25 to 35*, *young*, *college student*, *recent college graduate*, *boy*, *girl*, or others of a similar nature, such